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FILED
2015 SEP 14 AM 11:50
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
SANTA ANA

Marshall S. Sanders and Lydia O. Sanders, Trustee(s), or any Successor Trustee(s)
of the Marshall and Lydia Sanders Trust Dated April 20, 1990, appearing for themselves as trustees,
Pro Se

UNITED STATES DISTRICT COURT FOR THE
CENTRAL DISTRICT OF CALIFORNIA—SOUTHERN DIVISION
SANTA ANA

MARSHALL S. SANDERS and LYDIA O.
SANDERS, TRUSTEE(S) OF THE
MARSHALL AND LYDIA SANDERS
TRUST DATED APRIL 20, 1990.

Plaintiff,

vs.

BANK OF AMERICA, N.A.; WELLS
FARGO BANK, N.A., AS TRUSTEE, ON
BEHALF OF THE HOLDERS OF THE
HARBORVIEW MORTGAGE LOAN
TRUST MORTGAGE LOAN PASS-
THROUGH CERTIFICATES, SERIES 2007-
1; NATIONAL DEFAULT SERVICING
CORPORATION; SELECT PORTFOLIO
SERVICING, INC.; and DOES 1-20

Defendants

Case No.: SACV 15-00935 AG (ASx)

**DECLARATION OF LYDIA ONG
SANDERS IN SUPPORT OF EX PARTE
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION TO
CANCEL AND ENJOIN A TRUSTEE'S
SALE; AND, SEPARATELY,
REPLACEMENT OF COUNSEL FOR
CAUSE**

Date:

Time:

Dept.:

Trustee's Sale Date: September 22, 2015

Trustee's Sale Time: 12:00 P.M.

COMES NOW Plaintiffs, MARSHALL SAMUEL SANDERS and LYDIA ONG SANDERS
AS TRUSTEE(S) OF THE MARSHALL AND LYDIA SANDERS TRUST DATED APRIL 20,
1990 ("Plaintiffs" and/or "Homeowners") who provide the following Declaration of Lydia Ong
Sanders in support of her motion for a Temporary Restraining Order and Preliminary Injunction to
cancel and enjoin a trustee's sale scheduled for September 22, 2015:

DECLARATION OF LYDIA ONG SANDERS

1
2
3 1. My name is Lydia Ong Sanders and I have personal knowledge of the facts set forth in this
4 affidavit, which I make in support of my Ex Parte Motion for Temporary Restraining Order and
5 Preliminary Injunction to cancel and enjoin a Trustee's Sale of my property that is presently
6 scheduled for September 22, 2015.

7 2. I have sued Defendants, Bank of America, N.A. (hereafter "Bank of America"); Wells Fargo
8 Bank, N.A., as Trustee On Behalf Of The Holders Of The Harborview Mortgage Loan Trust
9 Mortgage Loan Pass-Through Certificates, Series 2007-1 (hereafter "Wells Fargo"); National Default
10 Servicing Corporation (hereafter "NDS"); Select Portfolio Servicing, Inc. (hereafter "SPS"); and
11 Does 1-20, to enjoin a threatened foreclosure.
12

13 3. I am and have been the owner of the residential real property described in the Complaint that
14 is my primary residence since 2003.
15

16 4. On or about December 26, 2006, as Trustee of the Marshall and Lydia Sanders Trust dated
17 April 20, 1990, I signed a seemingly never-ending stack after stack of "loan" documents pushed
18 across a very large table. The documents were positioned in front of me by an officer of First
19 American Title Insurance Company as agent for America's Wholesale Lender, for my initials and for
20 my signatures, time after time after time. I was sternly warned not to read them, or else, I would be
21 preventing employees from going home on time. Nor was I to make changes. Further, the loan
22 documents were on the verge of expiring. If loan documents expire there would be no loan. The
23 whole process must start over from the beginning. There is no assurance another loan would be
24 approved. So I signed as fast as I could. America's Wholesale Lender had already dragged me past
25 the point of no return and it would have been virtually impossible to start over with an entirely new
26 lender. Besides, home values, the overall housing market, and the economy, all which greatly
27
28

1 affected this "loan," I had been told, were slipping, and there were indications that a recession was
2 coming. The mass media and financial pundits were reporting daily that monetary Armageddon was
3 here. Under these oppressive conditions and exigent circumstances, not to mention promises I had
4 undertaken in reliance on this refinance, I rapidly initialed and signed, without reading a word. [On
5 the way home in the car, my husband, Marshall Samuel Sanders, remarked to me that they may as
6 well have held a gun to his head.] I could have said the same thing. They may as well have held a gun
7 to my head.
8

9 5. America's Wholesale Lender appeared in very large bold face type. Though I was unable to
10 read what I was signing, I did glimpse (or at least try to) as I was signing. This in order to try to
11 understand terms and conditions, but all I could "catch" was the largest and boldest of the print.
12

13 6. The documents were from America's Wholesale Lender; that much I got. I presumed that the
14 Note and Deed of Trust were likewise America's Wholesale Lender. But I had been told, and what I
15 had in front of me, the part I couldn't help notice for size and boldness, that America's Wholesale
16 Lender and Countrywide were one company. So, in my mind they were the same. America's
17 Wholesale Lender and Countrywide were the same company. Therefore, it didn't matter which name
18 was on the documents being signed, any of them. America's Wholesale Lender was Countrywide.
19 Countrywide was America's Wholesale Lender.
20

21 7. I was entering into a refinance of my existing Countrywide loan. That loan was to be paid off.
22 The balance on the Countrywide loan at that time, the time when it would be paid from the new
23 Countrywide loan, was over one million dollars (\$1,000,000.00).
24

25 8. For purposes of the Truth-in-Lending Act ("TILA") this was a refinance.

26 9. More specifically, for purposes of rescission under TILA, this was a refinance.
27
28

1 10. I entered into a residential mortgage loan transaction with America's Wholesale
2 Lender/Countrywide. The residential mortgage loan transaction consisted of a Note and Deed of
3 Trust securing my home.

4 11. Some time after March 5, 2013, I received a "Notice of Default and Election to Sell Under
5 Deed of Trust" dated March 5, 2013 (hereafter "Notice of Default", a copy attached to the Complaint
6 as Exhibit "C" and incorporated herein by reference) from NDS as the purported Trustee.

7
8 12. The Notice of Default did not identify the beneficiary or mortgagee, but did direct me to
9 contact Defendant SPS. The Notice of Default further claimed that Defendant NDS was acting as
10 Trustee.

11 13. The Notice of Default states "The undersigned mortgagee, beneficiary or authorized agent for
12 the mortgagee or beneficiary pursuant to California Civil Code §2923.55 declares that the mortgagee,
13 beneficiary or the mortgagee's or beneficiary's authorized agent has either contacted the borrower or
14 tried with due diligence to contact the borrower as required by California Civil Code 2923.55."
15 (Recorded March 6, 2013). None of the Defendants or anyone claiming to represent the Lender
16 under my loan ever contacted me to discuss the loan or any alleged outstanding default, or any
17 alternatives to avoid foreclosure. None of the named Defendants ever made any good faith attempt to
18 resolve the issues raised in the Notice of Default. Furthermore, I dispute the claims made in the
19 Notice of Default including the claimed amount owed.

20
21 14. Since January 1, 2013 I have not been contacted by any of the named defendants or anyone
22 purporting to be acting on their behalf. I have not been provided any information about a single point
23 of contact as prescribed by the recently enacted Homeowner's Bill of Rights.
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1 15. I never received any letter from any of the named Defendants or anyone purporting to be
2 acting on their behalf; that includes the toll-free telephone number made available by HUD to find a
3 HUD-certified housing counseling agency.

4 16. I never received any certified letter from any of the named Defendants or anyone purporting
5 to be acting on their behalf; that includes the certified letter made available by HUD to find a HUD-
6 certified housing counseling agency.

7
8 17. While I have not been provided with a Notice of Trustee's Sale it is my understanding a
9 foreclosure sale of the Property has been scheduled for September 22, 2015 at 12:00 P.M.

10 18. I have never been provided with any assignment or other documentation that demonstrates
11 that Defendant BofA, SPS, NDS or Wells Fargo acquired the full and unencumbered interest in the
12 mortgage loan from the original lender (non-party [America's Wholesale Lender {non-
13 existent}]/Countrywide).

14
15 19. I have never been provided with any Substitution of Trustee, or other documentation that
16 demonstrates, Defendant NDS was duly appointed by the Lender as Successor Trustee per the terms
17 and conditions of the Deed of Trust.

18
19 20. On February 17, 2010, I mailed a letter of rescission to Countrywide Bank, N.A., BofA, Wells
20 Fargo and other third parties formally cancelling and rescinding the loan that is the subject of this
21 litigation. A true and correct copy of the letter of rescission is attached hereto as Exhibit "A" and
22 incorporated herein by this reference as though set forth here.

23
24 21. I was never provided with the disclosures that I understood the Lender was required to
25 provide under the Federal Truth in Lending Act.

1 22. I had requested that Bank of America, Countrywide and Wells Fargo take steps to cancel the
2 mortgage, release its security interest, if any, in the subject Property, and refund all of the sums that I
3 paid from origination of the loan to the present.

4 23. As of the date of this declaration and certainly within the 20 days under the Federal Truth in
5 Lending Act, none of the Defendants sued me as required under TILA and *Jesinoski* if they disputed
6 the exercise of my TILA right of rescission, the 3-day, and/or 3-year statute of repose,
7 notwithstanding, nor did they take any steps to comply with my requests, as set forth in my TILA
8 rescission letter as I have not received any refund of any of my payments and I have not received any
9 documents canceling or rescinding the deed of trust and the note.
10

11 24. In light of my exercise of my TILA right of rescission, there is no longer a security interest, if
12 any, in the subject Property and therefore foreclosure of the deed of trust, would be a nullity, if a
13 Trustee's Sale were to be conducted by the Defendants. Such Trustee's Sale would be void, not
14 voidable, and void ab initio. The deed of trust and the note were void by operation of law at the point
15 my letter exercising my TILA right of rescission was placed into the mail. Therefore, the deed of trust
16 upon which Defendants have scheduled a Trustee's Sale for September 22, 2015, is in and of itself an
17 unlawful act, causing me continued financial injuries and personal injuries, the result of being
18 subjected, for years now, to illegal debt collection practices, and other illegal practices, under the
19 Federal Fair Debt Collection Practices Act ("FDCPA"), the Fair Credit Reporting Act ("FCRA"), and
20 myriad other consumer protection laws, statutes, ordinances, rules and regulations, including
21 administrative regulatory orders, both state and federal.
22

23 25. The deed of trust is void.
24

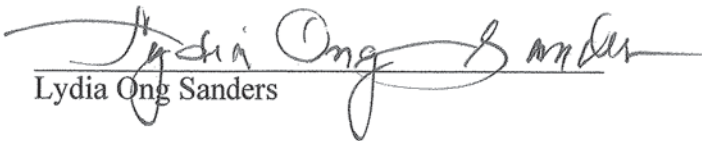
25 26. The note is void.
26

27 27. Defendants owe Plaintiffs the return of all monies paid.
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1 28. The Property is unique and money cannot replace my home. There are three (3) disabled
2 adults living in the home. One of them is I. All of who have been harmed already by the foreclosure
3 process and continue to be harmed by the hot pursuit of our home by Defendants. If a Court Order
4 canceling the Trustee's Sale is not entered and the Property is lost through a Trustee's Sale, my
5 family and I will suffer irreparable harm and the Property, which is the subject of this lawsuit, will
6 be lost and thus any judgment or other redress I might subsequently obtain will not have a positive
7 effect.
8

9 I declare under penalty of perjury under the laws of the State of California that the foregoing
10 is true and correct and that the attached exhibits are true and correct copies of the referenced
11 documents.

12 Executed on this ¹⁴ day of ^{September} ~~August~~, 2015 in Santa Ana, California.
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16 Lydia Ong Sanders
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